RESPONSE REQUESTED

No. 90-1073

Supreme Court, U.S.
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In The Supreme Court Of The United States

OCTOBER TERM, 1990

MARIE M. McMAHON

Petitioner,

v.

CHARLES S. TRUMP, IV, J. PHILLIP KESECKER, HARLEIGH E. SEELY, LISA M. GRUBER, R. ELDON METZGER, STEPHEN C. McBEE, DAVID H. SAVASTEN, GRACE BORELL, DAVID M. HALL, MARY GANO PARRILL, MELISSA K. MARLAND, THOMAS W. STEPTOE, JR., ANDREW M. FRYE, C. REEVES TAYLOR, and RICHARD GAY

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF

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STATEMENT OF CASE

Petitioner believes fundamental rights have been denied by elected officials, state officials, and state judges. Her belief is based on personal and conclusory affirmations of law which have found no favor in either state or federal court. From the Circuit Court of Morgan County, West Virginia, through the United States Court of Appeals for the Fourth Circuit, McMahon v. Trump, No. 89-2840, slip op. at 3 (4th Cir. Sept. 17, 1990) (per curiam), her complaints and appeals have been found to be without merit.

She now has before this Court every personage she has ever attempted to bring before any other court singly or as part of a group for the claims she presents. It is better to give a thorough history of this case as we know it from the beginning.

HISTORY OF THE CASE

1. This case began on June 3, 1987, before the Circuit Court of Morgan County, West Virginia, when petitioner challenged the eligibility of respondent Lisa M. Gruber for public office. Respondent Richard Gay was the defense attorney, and respondent Thomas W. Steptoe, Jr. was the judge. The court dismissed the action on July 13, 1987, for failure to state a claim.

2. On July 23, 1987, petitioner filed a complaint requesting a writ of mandamus that respondent David H. Savasten, Prosecuting Attorney of Morgan County, prosecute Gruber for failure to prosecute alleged political campaigning infractions by Gruber. Respondent Charles S. Trump IV was defense counsel. The Circuit Court of Morgan County, respondent Steptoe presiding, denied the

writ on September 1, 1987, citing the discretionary powers of a prosecuting attorney under West Virginia law.

3. In May, 1988, petitioner filed charges against respondent Gruber and in July, 1988, against respondent R. Eldon Metzger to have both removed from office. Petitioner alleged improper use of taxpayers' funds on votes taken by respondents, or conflicts of interest as, for instance, respondent Metzger's wife's deceased mother had been the wife of a land developer seeking extension of a water line which Metzger voted for and petitioner was against, or negligence in voting for the water line extension. Respondent Gay was again the defense attorney. Petitioner included complaints against Prosecuting Attorney Savasten and against the Circuit Court of Morgan County for allowing attorney

fees to respondents for previous actions filed by petitioner.

Pursuant to an order dated June 21, 1988, from Thomas E. McHugh, Chief Justice of the West Virginia Supreme Court of Appeals, the petition went before a panel of three state judges, respondents Steptoe, C. Reeves Taylor and Andrew M. Frye. Judges Taylor and Frye were from judicial districts different than Judge Steptoe. The panel dismissed with prejudice petitioner's complaint to have Gruber and Metzger removed from office in a detailed order, McMahon v. Gruber, C/A Nos. 88-P-13 & 88-P-14 (Cir. Ct. of Morgan County, W. Va., Sept. 28, 1988). Further, it upheld the award of attorney fees for previous actions against respondents.

4. On June 1, 1989, petitioner filed a complaint in the United States

District Court for the Northern District of West Virginia against all the above respondents alleging with specificity according to the allegation: violations of constitutional rights, conspiracy to trade favors and things of value under color of state law, improper legislative voting for unauthorized funds, improper organization of town council, ineligibility of council members for council positions, failure to prosecute election law violations, violation of political campaign laws, liability of respondent Melissa K. Marland, an Administrative Law Judge, for signing an order she knowingly knew to be based on fraudulent circumstances, failure to protect the public from injury for violation of equal protection of the laws by conspiring to protect each other, 13 counts of alleged violations seeking

relief from $10,000,000.00 in punitive damages to costs of litigation.

This complaint was dismissed by the District Court after finding respondents had acted in their legislative capacity and are absolutely immune from liability; the petitioner lacked standing to maintain the action; the petitioner had failed to allege any facts giving rise to a claim she had been deprived of a federally guaranteed constitutional right; that respondents did not act under color of state law; and that the conspiracy claims were conclusory and unsupported by factual allegations. McMahon v. Trump, C/A No. 89-20-M-K (N.D. W. Va. Oct. 3, 1989; Jan. 17, 1990; Jan. 30, 1990).

5. The petitioner then filed an appeal with the United States Court of Appeals for the Fourth Circuit on

November 15, 1989. The Fourth Circuit affirmed. McMahon v. Trump, No. 89-2840, supra.

DISCUSSION

It is difficult for respondents to know what exactly to answer. Petitioner's present appeal persists with the same conclusory and opinionated statements she has always maintained. She has mixed self-originating opinions with a pastiche of legal authority. These are usually unrelated, not based in factual circumstances and often without regard to the decisions of previous courts which have entertained her complaints.

Just as consistently the federal courts have found her to be without standing; that there is no federally cognizable claim; that pertinent respon-

dents did not act under "color of state law"; that petitioner has failed anywhere to allege any facts which give rise to a claim that she has been deprived of any "federally guaranteed constitutional right" by respondents. McMahon v. Trump, C/A No. 89-20-M-K, supra; McMahon v. Trump, No. 89-2840, supra. The following is an abbreviated record of arguments the respondents have maintained and the courts below have upheld.

A. STANDING

Petitioner has expressed no "injury in fact, economic or otherwise," Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 152 (1970), to herself or anyone else. She claims individuals have done harm to constitutional duties and rights but alleges no harm or interest within a

constitutionally protected zone of interests that are to be protected or regulated by law.

B. LIABILITY OF STATE OFFICIALS

Petitioner continues to assert that state officials have no discretion in matters on which she vehemently disagrees. In particular, respondent David H. Savasten, Prosecuting Attorney of Morgan County, West Virginia, is singled out for not prosecuting a case which petitioner deems he had no discretion in. In West Virginia, not unlike other jurisdictions, a prosecuting attorney is allowed discretion in the implementation of his duties. Skinner v. Dostert, 166 W. Va. 752, 278 S.E.2d 624 (1981).

Petitioner made this same claim of other respondents that they are liable

for actions they took in their official capacity. But prosecutors have discretion; judges (respondents Steptoe, Marland, Frye and Taylor) have immunity within their judicial duties, Bradley v. Fisher, 13 Wall. 335 (1872); and legislators (respondents Gruber, Metzger, Hall, Borell, Parrill) have immunity within their legislative duties. Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391 (1979). Petitioner fails to allege actionable claims and refuses to accept the rulings of state and federal courts that she hasn't.

C. CONSPIRACY

Conspiracies may not be pled in a conclusory fashion and should be supported with reference to materials surrounding the claims. Slotnick v.

Staviskey, 560 F.2d 31 (1st Cir. 1977). Secondly, conspiracies only exist when two or more persons combine to accomplish a crime or some unlawful purpose. But allowing an individual to run for office who qualifies under state law is not to make a conspiracy nor is the pursuit of a water contract deemed in a town's best interest by its elected council a conspiracy. Again the plaintiff fails to show factual circumstances for her allegations except that she vehemently disagrees with what elected officials and judges have decided within their official capacities.

CONCLUSION

The respondents have fought this legal harassment for nearly four (4) years and on every occasion have answered factually and responsibly. Every court

has found it necessary to dismiss petitioner's claims for lack of merit, yet each has given a fair and objective ear to all legal issues presented and all fact patterns alleged. This misguided and highly personal harassment should come to a finish. Respondents respectfully urge that this Court deny certiorari.

Respectfully submitted,

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